

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS LANGER,

Plaintiff,

vs.

MINH HANH THI HO, an individual and representative capacity as trustee; JOHN HO, in his individual and representative capacity as trustee; LIEM HOLSTON; and DOES 1-10,

Defendants.

CASE NO. 13cv2867-GPB(JLB)

ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS PREMATURE

[Dkt. No. 25.]

Before the Court is Defendants' motion for partial summary judgment and for the Court to decline supplemental jurisdiction. (Dkt. No. 25.) Plaintiff filed an opposition on July 9, 2014. (Dkt. No. 40.) A reply was filed by Defendants on July 22, 2014. (Dkt. No. 41.)

Plaintiff brought a second amended complaint against Defendants for violations of the Americans with Disabilities Act, California's Unruh Civil Rights Act, and California Disabled Persons Act. (Dkt. No. 19.) In their motion, Defendants argue that the injunctive relief claim is now moot since their expert on May 9, 2014 inspected the subject property and concluded that the facility met or exceeded all applicable standards for disability accessibility. (Dkt. No. 25-5, Schlottman Decl. at 2:19-26.) Therefore, since Plaintiff's claim for injunctive relief is now moot and there is no

1 continuing federal jurisdiction, Plaintiff's state law claims for damages are more
 2 appropriately adjudicated in California state court.

3 In opposition, Plaintiff argues that the Court should deny or continue the motion
 4 under Federal Rule of Civil Procedure Rule 56(d)¹ on the basis that the motion is
 5 premature since not only is there a discovery stay, but plaintiff has not yet been able
 6 to inspect the property. In reply, Defendants do not dispute that Plaintiff has not been
 7 able to inspect the property and concede that their motion for partial summary
 8 judgment cannot go forward without Plaintiff's inspection of the property. Therefore,
 9 in the reply, Defendants ask the Court to issue an order "(1) determining the discovery
 10 dispute attached hereto as Exhibit '11', and (2) requiring any desired inspection to take
 11 place in no more than 10 days, so that the MPSJ can be adjudicated as close to the
 12 current motion hearing date as possible . . ." (Dkt. No. 41 at 2.)

13 While the parties had agreed to an inspection date of June 25, 2014, it did not
 14 come to fruition. Both parties point the finger at each other as to the reasons why
 15 Plaintiff was unable to inspect the property on June 25, 2014.² In their reply,
 16 Defendants ask the Court to determine the discovery dispute at issue attached as
 17 Exhibit 11; however, that document references a Joint Motion for Resolution of
 18 Discovery Dispute filed in another case, 13cv2721-CAB(NLS), with similar issues, but
 19 not filed in this case.

20 First, the Court notes that it cannot resolve an issue that was filed in another case

21 ¹Rule 56(d) provides:

22 (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant
 23 shows by affidavit or declaration that, for specified reasons, it cannot
 24 present facts essential to justify its opposition, the court may:
 25 (1) defer considering the motion or deny it;
 26 (2) allow time to obtain affidavits or declarations or to take discovery;
 27 or
 28 (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).

²The parties should have contacted the Magistrate Judge for assistance in
 resolving this discovery dispute.

1 and not before it. Moreover, the Court notes that on June 20, 2014, Defendants
2 attempted to bring the matter before the Magistrate Judge by filing a document entitled
3 "Qualified, Limited Objection to Site Inspection Demand." However, that document
4 was struck on discrepancy by Magistrate Judge Burkhardt for failure to comply with
5 local or chambers rules. (Dkt. No. 39.) Over a month has passed and neither
6 Defendants nor Plaintiffs have not followed up with the proper procedure in order to
7 present this discovery issue to the Magistrate Judge prior to the hearing on Defendants'
8 motion for partial summary judgment.

9 Accordingly, the Court DENIES Defendants' motion for partial summary
10 judgment as PREMATURE. The parties are directed to contact the chambers of
11 Magistrate Judge Burkhardt to resolve the issue concerning inspection of the property
12 and any relevant issues. Prior to contacting the Chambers of Magistrate Judge
13 Burkhardt, the parties are instructed to read Judge Burkhardt's Civil Chambers Rules
14 regarding the procedure to present discovery disputes before her. The Court vacates
15 the hearing set for August 8, 2014.

16 IT IS SO ORDERED.

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18 DATED: August 1, 2014

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HON. GONZALO P. CURIEL
21 United States District Judge
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